

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

THELMA BOSTICK,)
v. Plaintiff,) No. _____
)
) Judge _____
JESS D. CARR and BIG M) Magistrate Judge _____
TRANSPORTATION, INC.,) Jury Demand
)
)
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 1441, and 1446, Defendants, Jess D. Carr and Big M Transportation, Inc. (“Defendants”), by counsel, file this Notice of Removal of this action from the Circuit Court in Davidson County, Tennessee, where it is now pending, to the United States District Court for the Middle District of Tennessee based upon diversity of citizenship and an amount in controversy exceeding \$75,000.00. The grounds for removal are as follows.

Procedural Background

1. This action was commenced on or about September 1, 2022, by Plaintiff’s filing of the Complaint in the Davidson County Circuit Court in Nashville, Tennessee, Case No. 22C1755 (the “Complaint”). True and accurate copies of the pleadings served upon the Defendants in this action are attached as Exhibit A.

2. The Complaint was served on Defendant Big M Transportation, Inc. on or about September 13, 2022, by service upon its registered agent. It is believed that Defendant Jess D. Carr was served on or about September 19, 2022, by certified mail. The Notice of

Removal is being filed within thirty (30) days after service of the Complaint in the matter upon the last-served defendant; therefore, the removal is timely in accordance with 28 U.S.C. § 1446.

3. The Complaint contains allegations of negligence, and negligence per se (Complaint ¶¶ 10-19). The Complaint seeks an amount to be determined by the trier of fact but not in excess of \$500,000 (*Id.*, at ¶ 21).

4. The Plaintiff is a citizen and resident of Davidson County, Tennessee (*Id.*, at ¶ 1)

5. Defendant Big M Transportation, Inc. is a corporation organized under the laws of the State of Mississippi, with its principal place of business in Blue Mountain, Mississippi. Defendant Jess D. Carr is a citizen of Missouri and a resident of Galena, Missouri (*Id.*, at ¶ 2).

6. The unnamed Defendant Penn National Insurance Company was served through the Commissioner of Insurance on September 7, 2022. The carrier is a corporation registered in the State of Pennsylvania with its principal place of business in Harrisburg, Pennsylvania.

7. Although the named Defendants are aware of unnamed Defendant Penn National Insurance Company, notice of removal is proper without Penn National's consent as it is merely a nominal or formal party. *Beasley v. Wells Fargo Bank, N.A.*, 744 Fed. Appx. 906, 914-15 (6th Cir. 2018). Penn National provided uninsured/underinsured ("UM/UIM") motorist coverage to Plaintiff. Penn National has represented it provided UM/UIM coverage in the amount of \$25,000 per claim and \$50,000 per accident. Because the named Defendants' insurance coverage is at least equal to that of the UM/UIM carrier, Penn National is a nominal party that will soon be conditionally dismissed from this case.

8. The United States District Court for the Middle District of Tennessee has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 as there is complete diversity

of the parties, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

9. A copy of this Notice of Removal is being served by United States mail on counsel for Plaintiff, and a Notice of Filing of Notice of Removal is being filed with the Davidson County Circuit Court in Davidson County, Tennessee, in accordance with 28 U.S.C. § 1446(d). (Copies of those notices are attached as Exhibit B.) The necessary filing fees have been paid simultaneously with the filing of the Notice of Removal.

8. Defendants demand a jury to try this case.

WHEREFORE, Defendants, Big M Transportation, Inc. and Jess D. Carr, pray this Court consider the Notice of Removal as provided by law governing removal of cases to this Court and that this Court enter the appropriate orders to affect the removal of this case from the Davidson County Circuit Court in Davidson County, Tennessee to this Court.

Respectfully submitted,

LEWIS THOMASON, P.C.

By: /s/ John R. Tarpley

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*Attorney for Big M Transportation, Inc.
and Jess D. Carr*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Removal was filed electronically. Notice of this filing will be served on the following counsel of record via the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served via regular U.S. mail and/or email.

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Attorneys for Penn National Insurance Company

This the 19th day of October, 2022.

/s/ John R. Tarpley
John R. Tarpley